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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/612,496	07/01/2003	Chad J. Kugler	787/006	3546

1473 7590 03/08/2007  
FISH & NEAVE IP GROUP  
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NEW YORK, NY 10036-8704

EXAMINER
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GILBERT, SAMUEL G

ART UNIT	PAPER NUMBER
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3735

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/08/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	Application No. 10/612,496	Applicant(s) KUGLER ET AL.
	Examiner	Art Unit
	Samuel G. Gilbert	3735

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 04 December 2006.

2a)  This action is **FINAL**.                            2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

4)  Claim(s) 1-59 is/are pending in the application.  
4a) Of the above claim(s) 13-41 and 53-58 is/are withdrawn from consideration.  
5)  Claim(s) \_\_\_\_\_ is/are allowed.  
6)  Claim(s) 1-12, 42-52 and 59 is/are rejected.  
7)  Claim(s) \_\_\_\_\_ is/are objected to.  
8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All    b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date *See Continuation Sheet*.  
4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.  
5)  Notice of Informal Patent Application  
6)  Other: \_\_\_\_.

Continuation of Attachment(s) 3). Information Disclosure Statement(s) (PTO/SB/08), Paper No(s)/Mail Date :2/3/2006; 8/16/2004; 8/2/2004; 7/22/2004; 10/2/2003.

## DETAILED ACTION

### ***Election/Restrictions***

Applicant's election without traverse of Invention of group I and the species of Figures 42-44, claims 1-12, 42-52 and 59 in the reply filed on 12/4/2006 is acknowledged.

Claims 13-41 and 53-58 withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention and species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 12/4/2006

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims ??? are rejected under 35 U.S.C. 102(e) as being anticipated by

Rahdert et al (2004/0260393).

Claims 1-6 - applicant's attention is invited to figures 19A-22. Elements 66D is an active magnet, elements -68- are passively magnetic, element -72- penetrates tissue element -72- includes barbs to resist removal and the device is made from biocompatible materials.

Claims 7-12 - applicant's attention is invited to figures 19A-22. Elements 66D is an active magnet, elements -68- are passively magnetic, element -72- penetrates tissue element -72- includes barbs to resist removal and the device is made from biocompatible materials.

Claims 47-51 - applicant's attention is invited to figures 18C. Elements 64 is an active magnet, element -66B- penetrates tissue element and includes barbs to resist removal and is magnetic. Further as shown in Figure 18C element 66B passes through at least a portion of element -64-.

Claims 52 and 59 - elements -132- are magnets and element -124- passes through the magnets and is anchored at elements -126- any number of magnets may be used the magnets may be connected to element -128- of -124- in the same manner as shown in figures 44A-44C.

Claims 42-44 are rejected under 35 U.S.C. 102(b) as being anticipated by Hennig et al(4,154,226).

Claims 42-44 - Element -28- is a magnetic device, element -14- is a second magnet, and attraction between the magnets secure the device in place.

Claims 45 and 46 are rejected under 35 U.S.C. 102(b) as being anticipated by Hennig et al(3,952,726).

Claims 45 and 46 - Element -3a- is a magnetic device, element -7- is a second magnet, and attraction between the magnets secure the device in place.

***Conclusion***

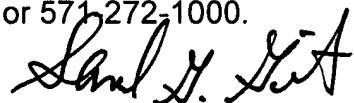
The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. US Patents 3,495,620; 6,409,656 and 6,604,529 teach related magnetic devices.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Samuel G. Gilbert whose telephone number is 571-272-4725. The examiner can normally be reached on Monday-Friday 6:30-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Marmor II can be reached on 571-272-4730. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Samuel G. Gilbert  
Primary Examiner  
Art Unit 3735

sgg